IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4732 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

ISHWARBHAI V MAKWAN

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/09/1999

ORAL JUDGEMENT

Shri Raval, the learned advocate is present on lbehalf of the petitioner. The petitioner is challenging the award passed by the Industrial Tribunal in Reference No. 699 of 1983 dated 23rd July, 1986. In this matter, rule has been issued on 17th January, 1991 and the same has been served upon the respondents but none has appeared on behalf of the respondents at the time of

hearing of the petition.

The facts of the present case are that the respondent workman had gone to the workshop on 30th January, 1978 and had demanded for new bus and that he had got excited and started abusing to the AWS. Therefore, he was chargesheeted on 30th January, 1978 to which he had replied on 1st February, 1978. The reply of the respondent was not found satisfactory by the authority and, therefore, inquiry was conducted and, thereafter, the respondent was found guilty and the Corporation has imposed punishment by order dated 25th February, 1978 by withholding the increment for a period of one year with cummulative effect. The respondent workman had preferred two appeals but both of them were rejected. Said order of punishment was thereafter challenged by the respondent before the tribunal by filing the aforesaid reference. In the said reference, the Tribunal has come to the conclusion that the action taken by the petitioner corporation against the workman is not proper since the misconduct alleged is not proved and, therefore, the tribunal has set aside the order of punishment dated 25th February, 1978. It has been contended by Mr. Raval, the learned advocate for the Corporation that the tribunal ought not to have interfered with the punishment of stoppage of one increment with cummulative effect because there was serious allegations against the respondents of not behaving properly with the AWS.

I have considered the submissions made by the learned advocate for the petitioner. I have also perused the chargesheet issued to the petitioner. I have also perused the finding given by the competent authority wherein the competent authority has come to the conclusion that the charge levied against the respondent was found to be proved. The competent authority has come to the conclusion that there was some misconduct committed by the respondent but filthy abuses was not given by the respondent. I have also considered the past record produced by the petitioner corporation before this Court. In all, 10 misconduct in past were committed by the respondent workman. None of the misconduct was serious and in in respect of indiscipline and using of filthy abuses with the office. Apart from this, the tribunal, while adjudicating the reference, in terms, came to the conclusion that the charge of abusive language is not at all proved and the inquiry officer has also come to the conclusion that the charge of abusive language is not proved and yet the workman was punished by withholding his one increment with permanent effect

and, therefore, same is not proper since the misconduct alleged is not proved and in the result, the tribunal set aside the order of punishment with a direction to restore the position and pay the difference in wages to the respondent workman.

After considering the reasoning given by the Industrial Tribunal and also considering the chargesheet finding and the past record of the respondent workman, I am of the opinion that the tribunal has not committed any error in coming to such conclusion and in setting aside the impugned order of punishment. There is no infirmity in the impugned order passed by the tribunal requiring interference of this Court in this petition under Article 226 and/or 227 of the Constitution of India. Hence this petition is liable to be dismissed.

In the result, this petition is dismissed. Rule is discharged. There shall be no order as to costs. Interim relief, if any, shall stand vacated.

24.9.1999. (H.K.Rathod,J.)

Vyas